1033.

SUPREME COURT OF THE UNITED STATES.

No. 75.

LESSEE OF GEORGE CLYMER ET AL., PLFF. IN ERROR,

vs.

GEORGE DAWKINS ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

INDEX.

	Original.	Print.
Declaration in ejectment and notice	1–2	2
Common order and order survey	5–6	4
Tenants entered defendants	6	5
Order of survey for defendants	8	6
Judgment against Jas. Button and others by default	9	6
Judgment set aside	9	7
Order, leave to plaintiff to amend survey	10	7
Jury to try issue and laid over	10	7
Verdict and judgment for defendants	11	7
Bill of exceptions	11 to 18	8
Patent to Clymer, Lynch and Blanton, marked A	18	12
Will of George Clymer (B)	19 to 25	12
Deposition of Isaac Davis	25–26	16
Deposition of Francis Peters	26	16
Plat marked (E)	28	18
Transcript of orphan's court, Philadelphia	29	20
Deed from Lynch to Nay, marked (O)	31	21
Deed to Richard Woolfolk, marked (Q)	32	22
Deed marked (N) to Avington Phelps	34	23
Paper marked (Y)	35	24
Division between Lynch and Blanton and George Clymer (Z)	36	25
Writ of error	41	27
Citation	43	28
Service of citation	45	28

J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA,
Eighth circuit, district of Kentucky, sct:

Pleas before the honorable John Catron and Thomas B. Monroe, judges of the circuit court of the United States of America in and for the eighth circuit and district of Kentucky, holden at the capitol, in the town of Frankfort, at the November term thereof, A. D. eighteen hundred and forty-two.

Be it remembered, that heretofore, to wit, on fifth day of May, A. D. eighteen hundred and forty-one, came John Doe, on the demise of George Clymer, a citizen and resident of the State of Pennsylvania, by his attorney, William Owsley, esq., into the court aforesaid, and filed the following declaration in ejectment, to wit:

UNITED STATES OF AMERICA,
Eighth circuit and district of Kentucky:

John Doe, a citizen and resident of the State *of State* of Pennsylvania, by William Owsley, his attorney, complains of Richard Roe, a citizen and resident of the State of Kentucky, of a plea of trespass and ejectment, for this, that whereas George Clymer, a citizen and resident of the State of Pennsylvania aforesaid, on the first day of January, 1840, had demised, and to farm let unto the plaintiff, John Doe, in the circuit and district aforesaid, one certain tract or parcel of land, situate, lying, and being in the county of Oldham, State of Kentucky, containing eleven thousand acres, with its appurtenances, for and during the term of fifty years, from and after the said first day of January, 1840, to be complete and ended; and whereas, afterwards, to wit, on the 2d day of January, 1840, the said John Doe, in virtue of the demise aforesaid to him by the said George Clymer, did enter upon the tract of land demised to him as aforesaid, and in virtue thereof became possessed of the said demised premises, and so therewith continued possessed until afterwards, to wit, on the 10th day of January, 1840, in the circuit and district aforesaid, the defendant, Richard Roe, with force and arms, entered upon the said demised premises, and ejected and expelled the said plaintiff from the possession of his aforesaid demised premises, and then and there other wrong and enormities to him, the plaintiff, *then and there* did against the peace and dignity of the United States of America, and to the damage of the plaintiff one thousand dollars. Wherefore he brings suit, &c.

JOHN DOE.

Messrs. James Alexander, Henry Admire, Reuben Bennett, George Button, Peter Blake, Patric Blankenship, James Baldoc, Matilda Black, Daniel Bennett, Reuben Button, Nancy Bullock, Francis Button, Ann Bennett, Benjamin Coons, Joseph Camper,

Margaret Chambers, William Coons, John Coons, Mary Castarphane, James Coons, Nicholas Coons, Moses Duncan, Johnson Dockins, William Dockins, George Dockins, Gamaliel Fullenwider, Nathan McFarland, John McFadden, Elisha Finley, William E. Gibson, James Hitt, Simpson Johnson, George Jones, Pendleton Ladd, William Ladd, William Landrum, Charles Mitchell, James Nay, William Pemberton, Thomas Pemberton, Barriel Pennington, Reuben Sale, R. Monroe Smith, Jesse Sage, Pleasant Sadler, John Steven, Lucy Sage, Francis Smith, Rufus Taylor, Henry Varble, George Varble, James M. Woolfolk, Lewis Willis, Francis Woolfolk, William Woolfolk, Phebe Whitesides, Joseph Whitesides, James Woods, William Whitesides, Richard Walden, Walton Yeager, Daniel Yager, Lewis M. Young.

Take notice that I am sued as casual ejector for the land described in the foregoing declaration of ejectment, and as I have no claim thereto, and you are in possession of said land, I advise you to appear on the third day of the next May term of the circuit court of the United States of America to be held for the district of Kentucky, in Frankfort, and then and there cause yourselves to be made defendants in my stead, or on your failure I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

Your friend,

RICHARD ROE.

NOVEMBER 24th, 1840.

STATE OF KENTUCKY,
Franklin county, sct:

This 8th of March, 1841, came before the undersigned, a justice of the peace in and for the county aforesaid, Elijah H. Tole, and made oath, that on the fifth of December last he delivered a true copy of the foregoing declaration and notice to each of the following persons, to wit, the wife of Reuben Bennett at his residence, he being absent from home, Patric Blankenship, James Baldoc, Daniel Bennett, John McFaden, George Jones, James Nay, Rufus Taylor, James M. Woolfolk, Lewis Willis, William Woolfolk, the wife of Francis Woolfolk, at his residence, he being from home, and Lewis M. Young; and that on the seventh of the same month he delivered a true copy of said declaration and notice to each of the following persons, to wit, to the wife of James Alexander at his residence, he being absent from home, to the wife of Henry Admire at his residence, he being absent from home, to Benjamin Coons, John Coons, the father of William Coons, at the residence of said William, he the said William being from home, and his father being at said William's, who had no other family at home, Mary Castarphane, James Coons, Nicholas Coons, Moses Duncan, Johnson Dawkins, William Dawkins, George Dawkins, the wife of Elisha Finley, he the said Elisha Finley being absent

from home, James Hitt, the wife of Simson Johnson at his residence, he being absent from home, Thomas Pemberton, Jesse Sage, John Stevens, Lucy Sage, Francis Smith, George Varble, Phebe Whitesides, the wife of Joseph Whitesides, at his residence, he being absent from home, and William Whitesides; and that on the 8th of the same month he delivered a true copy of the said declaration and notice to each of the following persons, to wit, to the wife of George Button at his residence, he being absent from home, to Peter Blake, Matilda Blake, Nancy Bullock, to the servant of Francis Button, at the residence of said Francis, there being no white person at the residence of said Francis Button, Joseph Camper, Margaret Chambers, Gamaliel Fullenwider, the servant of Wm. S. Gibson at his residence, there being no white person at the said Gibson's, Pendleton Ladd, William Ladd, the wife of William Landrum at his residence, he being absent from home, the wife of Charles Mitchell at his residence, he being absent from home, William Pemberton, the wife of Reuben Sale at his residence, he being absent from home, Pleasant Sadler, Henry Varble, the wife of James Woods at his residence, he being absent from home, the wife of Richard Walden at his residence, he being absent from home, Walton Yeager, and Daniel Yeager; and that on the ninth of the same month he delivered a true copy of the said declaration and notice to the following persons, to wit, Reuben Button, Bariel Pennington, and R. Monroe Smith. That at the time of delivering said copies he, the said Elijah H. Tole, explained to each of the persons to whom copies were delivered as aforesaid, the object and import thereof; and that each of said persons are tenants or persons possessed of the land described in the declaration, except the wives and servants to whom copies aforesaid were delivered; and that each of the wives and servants to whom copies as aforesaid were delivered, were wives and servants of persons tenants or persons in possession of the land mentioned in the declaration.

Given under my hand and seal this 8th March, 1841.

JAMES SHANNON, *J. P.*

"*Common order.*"

And afterwards, to wit, on the day and year aforesaid, and at the May term of the court aforesaid, came the plaintiff aforesaid, by *their* attorney, and it appearing to the court that the tenants in possession have been regularly served with a copy of the plaintiff's declaration and notice, and they failing to appear and plead to the plaintiff's said action, though solemnly called, came not, but made default.

It is therefore considered, that unless they appear here on the first day of the next term of this court, and cause themselves to be made defendants, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein supposed,

and plead thereto; or on failure thereof, judgment will be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And it is further ordered, that the surveyor of county do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then *and then* and there lay off and survey the same as either party may direct, having due regard to all deeds and other evidences that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court thirty days, at least, before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor to remove force should any be offered.

And afterwards, to wit, at the November term of the court aforesaid, A. D. 1841, came the plaintiff, by his attorney, and the tenants, William Pemberton, William Landrum, Daniel Bennett, Joel Kemper, Margaret Chambers, Pleasant Sadler, Henry Varble, Richard Walden, Daniel Yeager, Walton Yeager, Reuben Button, William Woolfolk, Francis Woolfolk, George Button, R. Monroe Smith, Reuben Bennett, James *Baldrich*, John McFaden, George Jones, Lewis M. Young, James Hitt, Matilda Black, Reuben Sale, John Coons, Thomas Pemberton, Benjamin Coons, *Pennington* Ladd, Joseph Gresham, Nicholas Coons, Moses Duncan, Jesse Sage, James Coons, Henry Admire, William Coons, Lucy Sage, George Varble, John Stephens, Thomas Lyons, John Coons, George Dawkins, Patrick Blankenship, Rufus Taylor, Elisha Finley, James Nay, William Dawkins, Joseph Whitesides, Lewis Willis, William Whitesides, and Mary Castarphane, by their attorney; and on his motion, the common order entered up herein against them is set aside, and they are admitted defendants, in the room and stead of Richard Roe, the casual ejector, and the said tenants agree to receive a copy of the plaintiff's declaration and notice in a plea of trespass and ejectment, confess the lease, entry, and ouster therein supposed, and agree to insist upon the title only at the trial.

And it is ordered, that if upon the trial of the issue a verdict should be given for the defendants, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster therein supposed, then the lessor of the plaintiff shall pay the costs of this prosecution if the plaintiff himself does not pay them.

And the said George Dawkins, Patrick Blankenship, Rufus Taylor, Elisha Findley, James Nay, William Dawkins, Joseph Whitesides, Lewis Willis, William Whitesides, and Mary Castarphane by George Armstrong their attorney, came and defend, &c., and for plea in this behalf severally say: that they are not guilty of the trespass and ejectment in the plaintiff's declaration alleged against them in manner and form as therein stated and set forth, and of this they put themselves upon the country.

And the plaintiff likewise.

And the said William Pemberton, William Landrum, Daniel Bennett, Joel Kemper, Margaret Chambers, Pleasant Sadler, Henry Varble, Richard Walden, Daniel Yeager, Walton Yeager, Reuben Button, William Woolfolk, Francis Woolfolk, George Button, R. Monroe Smith, Reuben Bennett, James Baldock, John McFadden, George Jones, Lewis M. Young, James Hitt, Matilda Black, Reuben Sale and John Coons, come and defend, &c., and for plea in this behalf severally say, that they are not guilty of the trespass and ejectment in the plaintiff's declaration alleged in manner and form as the same are there charged against them, and of this they put themselves upon the country, &c.

And the plaintiff likewise.

And the said Thomas Pemberton, Benjamin Coons, *Pennington* Ladd, Joseph Gresham, Nicholas Coons, Moses Duncan, Jesse Sage, James Coons, Henry Admire, William Coons, Lucy Sage, George Varble, John Stevens, Thomas Lyons and John Coons, by George Armstrong their attorney, come and defend, &c., and for plea in this behalf severally say, that they are not guilty of the trespass and ejectment in plaintiff's declaration alleged in manner and form as the same is therein stated and set forth against them, and of this they put themselves upon the country, &c.

And the plaintiff likewise.

And on motion [of] defendants, it is ordered that the surveyor of county do go on the land in controversy on the day of next, if fair, if not, then on the next fair day, and lay off and survey the same as either party may require, having due regard to all deeds and other evidence that may be produced, report all matters of facts specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal or one of his deputies is directed to attend said surveyor to remove force should any be offered.

And afterwards, to wit, at a subsequent day of the term aforesaid, A. D. 1841, came the plaintiff by his attorney, and it appearing to the court, that the tenants in possession, James Button, Francis Button, William Ladd, Charles Mitchell, Nancy Bullock and Johnson Dawkins, have been regularly served with a copy of the plaintiff's declaration and notice, and they failing to appear, although solemnly called, came not but made default.

It is therefore considered by the court that the plaintiff recover of the defendant Richard Roe his term yet to come and unexpired, of in and to a certain tract or parcel of land situate lying and being in the county of Oldham, State of Kentucky, containing eleven thousand acres with its appurtenances; and the writ of habere facias possessionem is awarded the plaintiff.

And afterwards, to wit, at the May term of the court aforesaid, A. D. 1842, came the parties aforesaid by their attorneys, and on motion of the plaintiff's attorney the judgment entered up in this case at the last term against Richard Roe by default as to the tenants James Button, Francis Button, Nancy Bullock and John Dawkins, be and the same is hereby set aside; and on the further motion of plaintiff's attorney, this suit as to said tenants is hereby dismissed. And on motion of plaintiff's attorney an attachment is awarded against William Neill, returnable to day of the next term for a contempt offered to the court in not attending at the present term as a witness for the plaintiff, he having been duly summoned.

And the marshal is directed upon serving said attachment to take bond of said Neill, with security in the penalty of $100, for his faithful attendance in court on the return day thereof, and there to remain until discharged.

And further leave is given the plaintiff to amend the survey returned herein.

And on motion of said plaintiff this cause is continued until the next term, for and at his costs. It is therefore ordered, that the lessors of the plaintiff pay to the defendants their costs at the present term expended.

And afterwards, to wit, at the November term of the court aforesaid, A. D. 1842, came the plaintiff aforesaid by his attorney, and part of the defendants by their attorney, (to wit,) George Dawkins, Patrick Blankenship, Rufus Taylor, Elisha Findley, James Nay, William Dawkins, Joseph Whitesides, Lewis Willis, William Whitesides and Mary Castarphane; and thereupon came a jury, to wit: William Rhodes, Langston Bacon, James B. Walker, William M. Todd, Hugh J. Brent, James Shelby, Edward Macallister, Orlando Brown, Joseph H. Christman, Leander J. Sharp, Jacob Hughes and A. W. Lockwood, who being elected, tried and sworn well and truly to try the issue joined as to the aforesaid defendants, George Dawkins, &c.; but there not being time to go through with the trial, the jury is adjourned until to-morrow morning 9 o'clock.

And at a subsequent day of the term aforesaid in the year aforesaid, came the parties aforesaid by their attorneys, and also the jury sworn in this cause; but there not being time to go through with the trial, the jury is adjourned until to-morrow morning 9 o'clock.

And at a subsequent day of the term aforesaid in the same year, came again the parties by their attorneys, and the jury sworn in this cause appeared agreeably to adjournment; but there not being time to go through with the trial, the jury is adjourned until to-morrow morning 9 o'clock.

And at a subsequent day of the term aforesaid in the same year, came again the parties aforesaid by their attorneys, and also the jury sworn, and after having heard the evidence, returned into court the following verdict: "we of the jury find for the defendant."

It is therefore considered by the court that the defendants go hence and recover of the lessor of the plaintiff their costs herein expended.

And at a subsequent day of the term aforesaid, to wit, the seventh day of December, in the same year, the following bill of exceptions was entered of record, to wit:

Be it remembered, that on the trial of this cause the plaintiff read in evidence the patent to Clymer, Lynch, and Blanton, marked (A,) (here insert it) and the will of George Clymer, marked B, (here insert it) and the depositions of Francis Peters and Isaac Davis, marked (C,) (here insert them) and the transcript from the orphans' court held at Philadelphia, marked D, (here insert it) and the plat and report of the surveyor made in this cause, marked (E,) (here insert it) and introduced witnesses whose testimony conduced to prove, that the land patented as aforesaid to Clymer, Lynch, & Blanton, is bounded, as designated in the plat aforesaid, by the letters and lines A, B, C, D, L, K, J, I, H, A, and that each of the defendants resided at the commencement of this action within said designated boundary, and that each of them holds and claims the land in their possession under persons who first settled the land, under purchase from William Taylor, as the agent of the patentee Lynch, or agent of the patentees Lynch & Blanton, with the exception of the defendant Nay, who was proved to hold under others, who purchased of Lynch: the evidence conduced to prove that each of the defendants, and others under whom they hold, had held the continued possession of the land by actual residence thereon, claiming it as their own for between twenty-five and thirty years before the commencement of this suit, and that the defendant Nay held under the person to whom the deed marked (O,) read in evidence by him, was executed by Lynch, (here copy that deed;) and it was proved that the defendant Woolfolk held under the person to whom the deed (Q) read in evidence by him was made by Taylor, (here insert it;) and it was proved that the defendant Blankenship held under the person to whom the deed (N,) read in evidence by him, was made by Taylor. No deed to any person under whom any of the other defendants held was introduced, nor was any deed offered in evidence by them; but it was proved that the persons under whom each of them held, purchased of Taylor, as agent as aforesaid, after a division of the land had been made at the instance of Lynch, by Neal and another commissioner of the Henry county court, as hereinafter stated; and that the persons to whom Taylor, as agent, sold as aforesaid, entered upon and first improved, settled, and occupied the land, and they and those claiming under them have held, claimed, and occupied the land as their own for upwards of twenty-five years before the commencement of this suit; but no evidence was introduced by either of the defendants conducing to prove that either of them, or any other person, had given any express notice

to the patentee, Clymer, in his life time, or either of the trustees named in the will of said Clymer, that they, or any of them, held the land adversely to the claim or right of Clymer; nor was any evidence given tending to prove that notice of any sort had ever been given to Clymer, or any of the trustees named in his will, by any of the defendants, or any other person under whom any of them claim, except the facts which the evidence did conduce to establish, that the land in possession of each defendant had been taken possession of, improved, and occupied by actual residence by each defendant, (or at first by him of whom he derived his possession and claim of right, and afterwards by himself,) as all entirely his or their own, and not as co-tenant with Clymer or his devisees, and had been so ever afterwards held, for upwards of twenty years, and up to the commencement of this suit.

It did not appear by the evidence that either of the defendants, or his predecessors in the possession, had any knowledge or notice, in fact, that Clymer was a co-partner with Lynch & Blanton, or had any interest in the land, and plaintiff's counsel insisted only that they were bound to know and notice the right of Clymer, apparent on the patent.

The following orders and proceedings of the county court of Henry, and the commissioners therein named, were read in evidence, (here copy the papers Z, Y,) and it was proved by one of the persons named in said proceedings as commissioner, to wit, William Neall, that at the time mentioned in paper Z, he was commissioner and surveyor, and that himself and the other commissioner named in that paper proceeded, at the request of Lynch, and run and marked the division line, as stated in that paper, for the purpose of dividing the eleven thousand acres patented to Clymer, Lynch & Blanton. It was proved that all the land in the possession of the defendants, or either of them, and here in contest, was within part of the tract set apart and assigned by said division to Lynch & Blanton. Evidence was introduced conducing to prove that each of the defendants, except the Dawkins, Whitesides, Castarphane, and Willis, were within the boundary of adverse patents, elder in date than the patent to Clymer, Lynch & Blanton; and that the defendants, Blankenship, Woolfolk, and Nay, or others under whom they claim, had contracted with the claimant of those elder patents for the land in their possession since they became possessed.

The foregoing was, in substance, all the evidence; whereupon the plaintiff moved the court to instruct the jury, to wit:

1st. That if the jury believe from the evidence that the defendants, or others under whom they claim, entered upon the land in contest under the claim of Clymer, Lynch & Blanton, for eleven thousand acres, that such of the defendants as the jury may find so entered by themselves, or others under whom they claim, can-

not avail themselves of the elder patents read in evidence, as to defeat the plaintiffs in this action.

2d. That the defendants cannot defeat the plaintiff's right to recover, if the jury believe from the evidence the plaintiff ever had right, by reason of the statute of limitation, provided the jury believe from the evidence that the defendants, or those under whom they claim, entered upon the land in contest under the title of Clymer, Lynch & Blanton, for the eleven thousand acres patented to them.

3d. That if the jury find from the evidence that any of the defendants entered upon the land in contest under a parol contract of purchase from the agent of Lynch & Blanton, who were tenants in common with Clymer in the eleven thousand acre patent, read in evidence, and the jury also find that such of the defendants as so purchased never notified the patentee, Clymer, or the trustees named in his will and codicil, or either of them, that they held adversely to Clymer's title, that the defendants as to whom the jury may so find cannot avail themselves of the statute of limitation in defence of this action. Also,

4th. That such defendants as the jury may find as above mentioned, if there be any such, cannot avail themselves of the outstanding conflicting elder patents read in evidence, unless the jury further find that such defendants, in the opinion of the jury, have proved a connection with such elder patent or patents, by purchase either made by them or others under whom they claim.

The court refused to give either instruction as asked, but instead thereof gave to the jury the following instruction:

The court instruct the jury, that if they find from the evidence that any of the defendants, or those under whom they claimed, entered upon the parcel of the land in controversy, in their possession at the commencement of this action, under a contract, whether it was executed or executory by parol or in writing with the agent of Lynch & Blanton, or either of their co-grantees, with Clymer, of the eleven thousand acres, by the patent read by plaintiff, or any other person claiming under that patent, whereby they purchased an individual two-thirds or any other such part, and not the entire interest in such parcel or parcels of the land, then such defendants, or those under whom they claimed, and who had so entered, did not by their entry into the possession oust Clymer or his devisees of his or their undivided third thereof; but the entry of such purchasers and their possession was for him Clymer, or his devisees, as well as for themselves; and in the absence of all evidence of notice to Clymer, or those claiming under him, of a subsequent adversary holding by such occupants, their possession did not become adversary in legal effect to Clymer or his devisees; and no defendant who so entered, can now avail himself of the outstanding legal title by the elder patents to [be] read in evidence; nor can any

such defendant prevail in his defence of this action by the length of his possession and the statute of limitation; nor can any defendant who entered, claiming the entire estate in his parcel of the land, add to the length of his own possession that of any one under whom he claimed and had succeeded, who had so entered under a purchase of an undivided part, and was so a co-tenant with Clymer or his devisees, and thereby make out the twenty years of adversary possession within the statute.

The defendants moved the following instructions, to find as in case of a non suit as to all the defendants:

That the plaintiff has shown title only to an undivided interest in the land, and that only one-fifteenth.

To find in favor of all the defendants whose tenements fall within the elder claims of Tuttle & Howard.

To find in favor of all whose possession existed and continued and have been held as their own for twenty years before the commencement of this suit.

To find in favor of those whose possession existed and continued under Lynch & Blanton, and adverse to Clymer, for twenty years before suit brought.

To find in favor of those whose possession originated, and have been held as their own, twenty years before suit brought, under purchases from Lynch and Blanton, or either of them, after the division made under the orders of the Henry county court.

The court refused to give either of the instructions as moved by the defendants, but in substitution therefor gave the following instructions:

"The court instruct the jury, that their verdict ought to be for each defendant who, or whose predecessor in possession from whom he had derived his possession and claim of right, had entered on the land in his possession at the commencement of the action twenty years before that day, by a purchase and claim thereof in severalty, all as his own, and not an undivided part in co-tenancy with Clymer or his devisees, but adversely to him or them, whether such purchase was from Lynch or Taylor, or Lynch & Blanton, or any other who had ever afterwards, up to the commencement of this suit, continued thus to hold such possession."

To each opinion and decision of the court, in refusing to give the instructions as moved by the plaintiff and each of them, and in giving the instructions which was given by the court in substitution or instead thereof, the plaintiff at the time excepted. Also, the plaintiff excepted to the instruction which is given by the court in substitution of the instructions moved by the defendants, at the time the instruction was given, and he now excepts to each opinion and decision; and prays that this his bill of exceptions *to* be signed, sealed, and enrolled, which is accordingly done.

THOS. B. MONROE. [L. S.]

Patent to Clymer, Lynch & Blanton, marked (A.)

CHRISTOPHER GREENUP, esq., Governor of the Commonwealth of Kentucky.

To all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of eleven Treasury warrants, Nos. 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, and 1426, there is granted by the said Commonwealth unto George Clymer one-third, and unto Charles Lynch and John Blanton two-thirds; the said Lynch & Blanton as assignees of Thomas and Anna Lewis, executor and executrix of John May, deceased, who was assignee of George Clymer, a certain tract or parcel of land containing eleven thousand acres, by survey bearing date the 30th day of May, one thousand seven hundred and eighty-four, lying and being in the county of Jefferson, on the waters of Harrod's creek, and bounded as followeth, to wit: Beginning at the northeast corner of John May and John Curd's 3,500 acre survey, three sugar trees S. 78° east, crossing several branches 1,100 poles to an elm, beech, and ash near a drain; west side thereof N. 12 east, crossing several branches, 1,623⅔ poles, to a beach; N. 78° west, 726⅓ poles, to a beech tree; S. 12° west, to John May's corner of his 5,000 acre survey, and with his line, the same course continued, 1,061⅔ poles to another corner, a white oak, gum and red oak; and with another line thereof N. 78 west, crossing Harrod's creek, 1,033⅓ poles to a beech in a line of Samuel Beall's 1,000 acre survey; S. 12 west, crossing Harrod's creek, 562 poles to two ash trees, and a buckeye corner to John May and John Curd's 3,500 acre survey; and with their line south 78° E., 660 poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said George Clymer, Charles Linch, and John Blanton, and their heirs forever.

In witness whereof the said Christopher Greenup, esq., governor of the commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said commonwealth to be affixed at Frankfort, on the 24th day of December, in the year of our Lord one thousand eight hundred and six, and of the commonwealth the fifteenth.

CHRISTOPHER GREENUP.

By the Governor,

JOHN ROWAN, *Secretary of State.*

A Copy. Attest: JAMES ROBERTSON, *R. L. C.*

By E. A. MACURDY, *D. R.*

Will of George Clymer, marked (B,) viz:

I, George Clymer, of the city of Philadelphia, esquire, do make, ordain and establish this instrument as my last will and testament, hereby annulling and revoking all wills at any time heretofore

made. I will and desire my trustees and executors hereinafter named, to pay off and discharge all my just debts as soon as they conveniently can. I will, devise and bequeath unto my dear wife Elizabeth Clymer, all my household goods and furniture, and plate, to hold the same to her, her executors, administrators and assigns. I also will, devise and bequeath unto my dear wife Elizabeth Clymer, for and during the term of her natural life, an annuity of two thousand five hundred dollars, payable to her in each year in quarterly payments in lieu and bar of her dower or thirds. I will, devise and bequeath my library to my son George Clymer, his executors, administrators and assigns; all the rest, residue and remainder of my estate, real and personal, whatsoever and wheresoever, I give, devise and bequeath unto my sons Henry Clymer and George Clymer, and unto my good friends John Read and James Gibson, to have and to hold the same to them, the said Henry Clymer, John Read and James Gibson, their heirs and assigns forever, as joint tenants upon trust; nevertheless as hereinafter is expressed and declared respecting the same, viz: in trust from time to time to sell and dispose of, or to mortgage, or otherwise encumber the whole or any part thereof in their discretion; and upon further trust to receive pay and apply all moneys arising from such sale or sales, mortgage or mortgages and encumbrances; and also from all outstanding debts, rents, issues and profits thereof, in payment of all my just debts. And upon further trust, to raise and pay to my dear wife yearly and every year, in quarterly payments, the annuity above bequeathed to her. And finally, after satisfying and discharging the aforesaid trusts, upon trust to hold the residue and remainder as follows: three tenth parts thereof, the whole into ten equal parts to be divided, in trust for my son Henry Clymer, his heirs and assigns, to whom I bequeath the same, having already advanced him two tenth parts thereof, the whole into ten equal parts to be divided. In trust for my grandchildren George Clymer McCall and William Coleman McCall, their heirs and assigns as tenants in common, to whom I bequeath the same, having already advanced their late father. And five tenth parts, the whole into ten equal parts to be divided, in trust for my son George Clymer, his heirs and assigns, to whom I bequeath the same. It is my will that no account for former advances shall hereafter be made. In order that the trusts herein created may not interfere with the administration of my estate, I do also authorize and empower my executors, or the survivor of them, to sell any part or parts of my real estate for the payment of my debts. I do hereby nominate, constitute and appoint the above named John Read and James Gibson executors of this my last will and testament.

In testimony whereof, I have hereunto set my hand and affixed my seal, the fifth day of January, in the year of our Lord one thousand eight hundred and thirteen.

GEORGE CLYMER, [SEAL.]

Sealed, signed, published and declared by the testator as and for his last will and testament, in the presence of us,

LAMBERT CADWALLER,
MARIAH MEREDITH,
ANN HOWELL.

I, George Clymer, of the city of Philadelphia, esquire, do publish and declare this instrument as and for a codicil to my last will and testament. I do add my much respected friend Dr. Casper Wister, of Philadelphia, to the trustees appointed in my last will; and do devise, grant and bequeath unto Henry Clymer, George Clymer, jr., John Read and James Gibson, and the said Dr. Casper Wister, all my estate, real and personal, whatsoever and wheresoever, to have and to hold the same to them, their heirs and assigns, as joint tenants in trust, to do, execute and perform all and every the trust declared and expressed in my said will, which I hereby confirm and ratify in all respects, except as is herein altered.

In witness whereof I have hereunto subscribed my name and affixed my seal, the eighteenth day of January, in the year of our Lord one thousand eight hundred and thirteen.

GEORGE CLYMER, [SEAL.]

Signed, sealed, published and declared by the testator as and for a codicil to his last will, in presence of us,

LAMBERT CADWALLER,
MARIA MEREDITH,
ANN HOWELL.

I, George Clymer, on full reflection and my own thought, do make this second codicil to my last will and testament: having divided my estate in ten parts, I have thought proper to change the allotment, giving to my sons Henry and George equal four parts, and to my grandsons George McCall and William McCall, the other two parts, without regard to any advances made by me to any of them.

In witness whereof I have hereunto set my hand and seal, this 22d day of January, one thousand eight hundred and thirteen.

GEORGE CLYMER, [SEAL.]

Signed, sealed, published and declared by the testator as and for a second codicil to his last will, in presence of us,

LAMBERT CADWALLER,
SAMUEL MEREDITH,
ANN HOWELL.

PHILADELPHIA, *January 30th*, 1813.

Then personally appeared Ann Howell, one of the witnesses to the adjoining will and codicils, and on her solemn oath according to law did depose and say: that she did see and hear George Clymer, esq., the testator in the said will named, sign, seal, publish

and declare the said will as and for his last will and testament, and the said codicils as and for his codicils to his last will and testament; and that at the doing thereof he was of sound mind, memory and understanding, to the best of her knowledge and belief. And the said deponent did further depose and say, that she did see Lambert Cadwaller and Maria Meredith, the other two witnesses to the aforesaid will, and the other witnesses to the first adjoining codicil, subscribe their names as witnesses to the said will and codicil, in the presence and at the request of the aforesaid testator, then in a sound and disposing state of mind. And the said deponent did further depose and say, that she did see Samuel Meredith, one of the witnesses to the last adjoining codicil, dated the 22d day of January, 1813, subscribe his name as a witness thereto, in the presence and at the request of the aforesaid testator, then in a sound and disposing state of mind, to the best of her knowledge and belief.

Coram. SAM'L BRYAN, *Register.*

City and County of Philadelphia, sct:

I certify that the aforegoing writing is a true copy of the original last will and testament of George Clymer, esquire, deceased, and probate thereof on file and remaining on record in the register's office at Philadelphia.

Given under my hand and seal of office, this 17th day of Janua-
[L. S.] ry, anno domini one thousand eight hundred and fifteen.

SAMUEL BRYAN, *Register.*

PENNSYLVANIA, *County of Philadelphia, sct:*

I, Jacob Rush, president of the court of common pleas of the county of Philadelphia, do certify that the within certificate signed by Samuel Bryan, esquire, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia in the commonwealth of Pennsylvania, is in due form and by the proper officer.

In testimony whereof I have hereunto set my hand and seal, this 21st day of April, anno domini 1815.

JACOB RUSH, [SEAL.]

STATE OF PENNSYLVANIA, *Philadelphia county, sct:*

I, John Porter, prothonotary of the court of common pleas of Philadelphia county, do certify that the hon. Jacob Rush, esq., by whom the foregoing attestation is made, and who has thereto subscribed his name, at the time of so doing was, and still is, president judge of the first judicial district of Pennsylvania, composed of the city and county of Philadelphia, and presiding judge of the court of common pleas of Philadelphia county, orphan's court, and court of general quarter sessions of the peace for the said county, duly commissioned and qualified, to whose acts as such full faith and credit is and ought to be given as well in courts of justice as elsewhere.

In testimony whereof I have hereto set my hand and affixed the [L. S.] seal of my office at Philadelphia, the twenty-first day of April, anno domini one thousand eight hundred and fifteen.

JNO. PORTER.

KENTUCKY, *sct:*

I, Achilles Sneed, clerk of the court of appeals for the State aforesaid, being duly authorized by law to receive and admit to record deeds and other writings in my office, do hereby certify that the foregoing will, with the testimonials thereto annexed, was produced to me in my office in Frankfort, on the 28th day of November, 1821, and that the same is truly recorded.

In testimony whereof I have hereunto set my name the day and year aforesaid.

ACHILLES SNEED, *C. C. A.*

A copy. Attest: J. SWIGERT, *C. C. A.*

Depositions of Isaac Davis and Francis Peters, marked (C.)

UNITED STATES,

Eastern district of Pennsylvania, sct:

Be it remembered, that on this sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-two, before me a commissioner to take acknowledgments of bail and affidavits in civil cases, appointed by the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, personally appeared Isaac Davis and Francis Peters, persons of sound mind and lawful age, witnesses for the complainant in a civil suit now depending in equity in the eighth circuit court of the United States, Kentucky district, wherein John Doe on the demise of George Clymer is plaintiff, and Reuben Bennett, Patrick Blankenship, and others, are defendants. And the said Isaac and Francis being by me first carefully examined and cautioned, and the said Isaac affirmed, and the said Francis sworn, to testify the whole truth and nothing but the truth, do depose and say, viz: the said Isaac Davis saith, that Dr. Casper Wister, formerly of the city of Philadelphia, who was one of the trustees named in the will and codicil of George Clymer, late of Philadelphia, deceased, was the uncle of the wife of this witness, and that said Dr. Casper Wister is deceased, he having departed this life in the year 1818; and further this witness saith not.

ISAAC DAVIS.

The said witness, Francis Peters, saith, that he knew and was well acquainted with Henry Clymer, who was one of the trustees named in the will and codicil of George Clymer, late of Philadelphia, deceased; that said Henry Clymer was the uncle of this witness, and that he is deceased, he having departed this life about the month of April in the year 1830, to the best knowledge and belief of this witness; and further he saith not.

FRANCIS PETERS.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct:

I, J. Burchard, do hereby certify, that the reason for taking the foregoing depositions is, that the witnesses live in the city of Philadelphia and State of Pennsylvania, more than one hundred miles from Frankfort, in the State of Kentucky, the place of the trial of the cause for and in which said depositions are taken, and are necessary.

I further certify, that no notification was made out and served on the defendants or adverse party or parties, or his or their attorney, to be present at taking the depositions, or to put interrogatories if he or they may think fit; and that no notification of the time and place of taking the said depositions was made out and served on the said defendants or adverse party or parties, because neither of the said adverse party, nor his or their attorney, was at the time of taking the said depositions within one hundred miles of the said city of Philadelphia, the place of taking the said depositions.

I further certify, that on this sixteenth day of August, A. D. 1842, I was attended by the said witnesses, who are of sound mind and lawful age, and were by me carefully examined and cautioned, and the said Isaac affirmed, and the said Francis sworn, to testify the whole truth, and the depositions were by me reduced to writing, and after carefully reading the same to the witnesses they subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up, directing and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify, that I am not of council or attorney to either of the parties in said depositions and caption named, or in any way interested in the event of the said civil causes named in the caption.

J. BURCHARD,
U. S. Commissioner for E. D. Pennsylvania.

UNITED STATES,
Eastern district of Pennsylvania, sct:

I certify that J. Burchard, before whom the foregoing depositions were taken, was at the time of taking the same, and still is, a commissioner appointed by the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, to take acknowledgments of bail and affidavits in civil cases, &c.

Witness my hand and the seal of said court at Philadelphia, this seventeenth day of August, A. D. 1842, and in the sixty-seventh year of the independence of the said United States.

[L. S.]

FRA. HOPKINSON,
Clk. Circt. Ct.

Plat marked (E,) annexed to this page.

Pursuant to the accompanying order, I surveyed, as follows, (to wit:) May 30th, 1842, we met at the house of Joseph Whitesides, and thence proceeded to 2 sugar trees standing at the corner of Mrs. Curd's farm, said to be the N. E. corner of May and Curd's 3,500 acre survey. We then attempted to run off said survey as follows, (to wit,) S. 12° W., running with a marked line about 40 poles, beyond which no marks were discovered, and continuing the same, crossing the road leading from Lagrange to Brownsboro, at 565 poles, whole distance 848⅔ poles, to a point in Mrs. Wilman's field, where we could find no corner; thence N. 78° W., 100 poles. No marks being found, we adjourned to meet the next morning at the mouth of Cedar run.

May 31st, 1842, began at the mouth of Cedar run, thence S. 12° W., 60 poles, we discovered a marked line bearing S. 13½ W., which we ran 60 poles further; after which we could not find any more marked trees; but continuing the same course, (S. 13½ W.,) crossing Darby at 400 poles, whole distance 500 poles, still in the woods; but finding no more marks, we went back to the mouth of Cedar run, at which place began again and run S. 78° E., 754 8/100 poles, where intersected the line first run at the point marked M, on the plat, 15 6/100 poles south of the beginning; we then adjourned to meet at the same place on Tuesday, the 21st of June, 1842.

June 21st, 1842, having met according to adjournment, we proceeded to survey, as follows, to wit: Beginning at the sugar trees above named, and running thence N. 78° W., through Charles J. Head's and James Leet's farms, 744 poles, to Harrod's creek. By examining the patent of May & Curd's 3,500 acre survey, we saw that the west line of said survey should cross Harrod's creek twice, which it could not possibly do from this point; we therefore run due north up the creek 13 6/100 poles, to a buckeye on the bank of the creek, from which place the said line of May & Curd's survey would cross the channel in which the water now runs twice, (water being low,) but could not cross the entire bed of the creek at all; thence N. 12° E., running through Blankenship's farm, and crossing Harrod's creek at 180 poles; on the bank of the creek we discovered a marked line tree, and continuing the same course through Woolfolk's and R. Bennett's farms, 568 poles, to a beech marked as a line tree, standing near the Westport road, which tree we crotched, and by counting the gradulations from the marks outward, we discovered that the tree had been marked 22 years, which was acknowledged by Willis Blanton, agent for plaintiff, and George Armstrong, attorney for defendants; we then went back and blocked two other trees, to wit, a white oak and honey locust, standing in the line, and the marks of which were of the same date as the other, acknowledged by the same parties; thence S. 78° E., passing through the farms of R. Bennett, McGinity, and F. Woolfolk, 42½

poles, to the N. E. line of Wm. Lyne's 1,000 acre survey; thence with the same N. 40¾° W., 47 poles, to white oak corner to McFadden, said to be in a line [with] John May's 5,000 acre survey; thence S. 78° E., with a marked line to Harrod's creek, a distance of 64 poles; continuing the same course through James Hitty's farm, crossing Harrod's creek at 376 poles, and through the farms of Henry Admire and George Varble, 614 19/100 poles, to a point in the woods—no corner nor marked trees found; thence N. 12° E., 60 poles, to Lagrange and Westport road, through Duncan's farm, 280 poles, to a bend in Harrod's creek, through Daniel Yeager's farm, crossing Harrod's creek at 560 poles, and continuing the same course, whole distance, 960 poles, to a point, Wm. Gipson's pasture—no corner found. We then went back to McFadden's corner, and running thence N. 78° W., 414½ poles, and also extending the line, the west line, until the two lines intersected in a point near Henry Button's field—no corners nor line trees discovered.

June 24th, 1842. By request of George Armstrong, attorney for defendants, I surveyed according to the patent of Wm. Lyne, as follows, to wit: Beginning at 2 beeches, corner to Fleming's preemption, thence S. 55¾ E., 36 poles, to Woolfolk's corner, 64 poles to Louisville road; 204 poles to Clymer's line; 292 poles to George Lyne's corner; 325 48/100 poles to a beech marked as a corner on the creek; thence N. 47¾ E., 20 poles; N. 19 E., 16 poles; N. 42¾ E., 32 poles; S. 87½ E., 16 16/100 poles; S. 61¼ E., 111 6/10 poles; N. 38¾ E., 17 8/10 poles; N. 43¼ E., 12 poles, to a white oak, corner to Woolfolk & Bennett; N. 30¾ E., 20 6/10 poles; N. 23½ E., 52 poles; N. 51 E., 16 poles; N. 63 E., 26 6/10 poles, to 2 sugar trees and hickory, corner to Bennett and McGinity; N. 50½ E., 20 poles; N. 72 E., 52 poles, to white oak, corner to McGinity and Francis Woolfolk; N. 86¾ E., 20 poles; N. 85 *poles* 32 poles,; N. 64 E., 28 poles; N. 3 E., 32 poles; N. 20 E., 26 poles, to F. Woolfolk's corner on the creek—no marked trees found; thence leaving the creek, N. 40¾ W., 65 1/10 poles to a white oak, corner to McFadden, and continuing the same course, whole distance 490 poles, to 2 beeches marked W. W. & R. Woolfolk; thence to the beginning, all of which is shown in the annexed plat.

OLDHAM COUNTY, KEN.

SANDFORD C. YEAGER,
Surveyor O. County.

CHARLES P. HEARD, DAVID BUELL. } Chairmen, sworn.

Surveyor's fee - - - - - -	$30 00
2 chainmen, each 6 days, at one dollar per day -	12 00
	$42 00

[FOR PLAT SEE ORIGINAL.]

References.

A, B, C, D, E, F, G, represents the survey made by me on the 5th, 6th, and 7th day of August, 1841.

A, H, I, J, K, L, represents the line run on the 21st, 22d, and 23d of June, 1842.

A, M, N, O, P, represents the line run on the 30th and 31st days of May, 1842, in attempting to survey May & Curd's 3,500 acre survey.

1, 2, 3, 4, represents the survey of Wm. Lyne made *made* on the 24th of June, 1842.

SANDFORD C. YEAGER,
S. O. County.

Laid down by a scale of 160 poles to the inch.

Transcript from Orphans' Court at Philadelphia, marked (D.)

COUNTY OF PHILADELPHIA, *sct:*

I certify, that at an orphans' court for the county of Philadelphia, held at Philadelphia on the 23d day of October, A. D. 1830, before the honorable Edward King and his associate justice of said court, in the matter of the petition of John Read and James Gibson, executor of the last will and testament of George Clymer, deceased.

On the motion of John M. Read, due proof having been made of the service of the citation issued on the said petition on the Philadelphia Bank, and the executors of Mrs. Powell, and the heirs and devisees of the said George Clymer consenting to said application, the said John Read and James Gibson, executors of the said George Clymer, were dismissed from the duties of their said appointment, and entirely discharged and released from the said executorship.

[SEAL.] Witness my hand and the seal of the said court, at Philadelphia, this second day of December, A. D. 1830.

ROBERT ANDREW, *Clerk O. Ct.*

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, sct:

I certify the foregoing writing to be a true copy of the original paper writing, as filed in the register's office for the city and county of Philadelphia.

[L. S.] Given under my hand and seal of office this 21st day of June, A. D. 1842.

WM. PIERSOL, *Register.*

PENNSYLVANIA,
Philadelphia county, ss:

I, Edward King, esquire, president of the first judicial district of Pennsylvania, and presiding judge of the court of common pleas,

orphans' court, and court of general quarter sessions of the peace for the county of Philadelphia, do certify, that William Piersol, esq., by whom the annexed record, certificate, and attestation were made and given, and who in his own proper handwriting hast hereunto subscribed his name and affixed his official seal, was at the time of so doing, and now is, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as thereout; and that the said record, certificate, and attestation are in due form, and made by the proper officer.

In testimony whereof, I have hereunto set my hand the twenty-second day of June, eighteen hundred and forty-two.

EDWARD KING, *President.*
Judge 1st Dist. Penna.

PHILADELPHIA COUNTY, *ss:*

I, Samuel Hart, esquire, prothonotary of the court of common pleas for the county of Philadelphia, do certify, that the honorable Edward King, esquire, by whom the foregoing attestation is made, whose name is thereto subscribed, was at the time of making thereof, and still is, president of the first judicial district of Pennsylvania, and presiding judge of the court of common pleas, orphans' court, and court of general quarter sessions of the peace for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and af-
[L. S.] fixed the seal of the said court, the twenty-second day of June, eighteen hundred and forty-two.

S. HART, *Prothonotary.*

Deed marked (O,) viz:

This indenture made this 30th day of August, eighteen hundred and three, between Charles Lynch, of the county of Shelby, and State of Kentucky, of the one part, and Samuel Nay, of the county of Jefferson, of the other part, witnesseth, that for and in consideration of the sum of four hundred dollars in hand paid by the said Samuel Nay, the receipt whereof is hereby acknowledged, the said Charles Lynch has sold, and by these presents doth grant, bargain, and sell unto the said Samuel Nay, his heirs or assigns, one hundred and fifty acres of land situate, lying, and being in the county of Jefferson, on the waters of Harrod's creek, part of an eleven thousand acre survey in the name of George Clymer, and bounded as followeth, (to wit:) Beginning at *Crimer's* corner, a hickory and dogwood near the road, S. 45 W., 125 poles, to two dogwoods; N. 45 W., 192 poles, to two beeches and hickory; thence N. 45 E.,

125 poles, to a white oak and dogwood; S. 45 E., 192 poles, to the beginning; together with and singular its appurtenances to the same belonging, or in anywise appertaining: to have and to hold the said land, with its appurtenances hereby conveyed to the said Samuel Nay, his heirs and assigns, forever, to his and their only proper use and behoof; and the said Charles Lynch and his heirs doth covenant with the said Samuel Nay and his heirs, that he, the said Charles Lynch, and his heirs, the said one hundred and fifty acres of land, from himself and his heirs and all other persons whatever, will forever warrant and defend.

In testimony whereof, the said Charles Lynch has hereunto subscribed his name and affixed his seal the day and date above written.

CHAS. LYNCH. [SEAL.]

Sealed and delivered in presence of

WORDEN POPE, *Clk.*

JEFFERSON COUNTY, *sct:*

SEPTEMBER 1st, 1803.

This day Charles Lynch came personally before me, Worden Pope, clerk of the county court in and for the county aforesaid, and signed, sealed, acknowledged, and delivered the within deed of bargain and sale to Samuel Nay, as and for his act and deed, and thereupon the same was recorded in my office.

Test: WORDEN POPE.

Deed to Richard Woolfolk, marked (Q,) viz:

This indenture, made this fifteenth of December, eighteen hundred and twelve, between William Taylor, of the county of Shelby, and State of Kentucky, on the one part, and Richard Woolfolk, of the county of Jefferson, and State aforesaid, of the other part, witnesseth, that for and in consideration of the sum of one dollar, in hand paid by the said Richard Woolfolk, the receipt whereof is hereby acknowledged, the said William Taylor hath bargained and sold, and by these presents doth bargain, sell, and release unto the said Richard Woolfolk, his heirs, &c., a certain tract or parcel of land in the county of Jefferson, on the waters of Harrod's creek, containing two hundred and seventy-two acres, be the same more or less, part of a 11,000 acre tract formerly in the name of George Clymer, which is bounded as followeth, to wit: Beginning at a white oak and dogwood, corner to Samuel Nay, thence N. 45 west, with a line of Bennett's heirs, 240 poles to their corner, a red oak, beech, and maple sapling on the bank of Harrod's creek; thence down the same, binding thereon, 280 poles, to two beech and buckeye, corner to Phillips, and with his line S. 10 E., 56 poles, to a white walnut and red oak sapling on a branch; thence S. 45 E., 228 poles, to a black oak and hickory; thence N. 45 E., to the beginning: to have and to hold the said tract or parcel of land, with

its appurtenances, to the said Richard Woolfolk, his heirs, &c., forever, to their only use and behoof. And the said William Taylor, for himself and his heirs, doth covenant with the said Richard Woolfolk and his heirs, the said tract of land against the claim of himself and his heirs, and all manner of persons claiming under him or them, to the said Richard Woolfolk and his heirs, will forever warrant and defend. But it is clearly understood by the parties, that the said William Taylor has only sold and conveyed to the said Richard Woolfolk such title as is vested in him to the said land, but is in no way bound to support the title to said land against the claim of any other person whatever.

In witness whereof, the said William Taylor hath hereto set his hand and affixed his seal, the day and date first written.

WILLIAM TAYLOR. [L. S.]

JEFFERSON COUNTY, *sct:*

DECEMBER 17th, 1812.

This day the within named William Taylor came in his proper person, before me, as clerk of the county court of said county, and acknowledged and delivered the within indenture of bargain and sale, as and for his act and deed. Whereupon I have recorded the same in my office.

WORDEN POPE.
CURREN POPE,
Clk. Jeff. Co. Court, Ky.
By N. J. CARTMELL, *D. C.*

A copy—attest:

Deed marked (N,) in exceptions, viz:

This indenture, made this eleventh day of April, eighteen hundred and eleven, between William Taylor, of the county of Shelby, and State of Kentucky, of the one part, and Avington Phelps, of the county of Jefferson, and State aforesaid, of the other part, witnesseth, that the said William Taylor, for and in consideration of the sum of one dollar in hand paid, the receipt whereof is hereby acknowledged, the said William Taylor hath bargained and sold, and by these presents doth grant, bargain, sell, release, deliver, and convey all his right, title, and interest in and to a certain tract or parcel of land in Jefferson county, on Harrod's creek, whereon the said Phelps now lives, containing two hundred and twenty-five acres of land by survey, be the same more or less, to the said Avington Phelps, his heirs, executors, administrators, &c., forever; which said two hundred and twenty-five acres of land is bounded as follows, to wit: beginning at two beech and buckeye on the east bank of Harrod's creek; thence S. 10 E., 56 poles, to a white walnut and red oak sapling; thence S. 45 east, 123 poles, to a white oak, dogwood, and beech in Woolfolk's line; thence west 300 poles, to two ash saplings; thence N. 22 west, 80 poles, to Harrod's creek, and up the same, and binding thereon, to the beginning: to have

and to hold the said bargained and released land to the said Phelps, his heirs, &c., forever, to their only proper use and behoof, with the appurtenances thereto belonging. And the said William Taylor and his heirs doth covenant with the said Avington Phelps and his heirs, the said released land, against the claim of him, the said William Taylor, and his heirs, and all persons claiming under him or them, to the said Phelps, will forever quit claim and release all their title to said land, but is in no way accountable to support the title against any other claim or interference whatever.

In witness whereof, the said Taylor hath hereto set his hand and affixed his seal, the day and date above written.

WILLIAM TAYLOR. [L. S.]

WOODFORD CURD,
SMITH PHELPS.

JEFFERSON COUNTY, *sct:*

JULY 26th, 1811.

This day the within indenture of bargain and sale from William Taylor to Avington Phelps, was proven before me, as clerk of the *county* of said county, by the oaths of Woodford Curd and Smith Phelps, the subscribing witnesses thereto. Whereupon I have recorded the same in my office.

WORDEN POPE.
A copy—attest: CURRAN POPE,
Clk. Jeff. Co. Court, Ky.
By N. J. CARTMELL, *D. C.*

Paper marked (Y,) part of bill of exceptions.

STATE OF KENTUCKY,,
Henry County, sct:

HENRY COUNTY COURT, *July 23d*, 1799.

On motion of Joel Jackson for that purpose, it is ordered, that Thomas Reese, William Nealle, George Calhoun, William Samuel, jr., Daniel Farley, and George Scott, be, and [they are,] hereby appointed commissioners for this county, under the act of Assembly, entitled "An act to reduce into one the several acts for the conveyance and division of land." And afterwards, at a county court for the county aforesaid, held on the 6th day of June, 1808, ordered that Isaac Fords be appointed a commissioner for the division of lands in this county.

HENRY COUNTY COURT, *Clerk's Office.*

I certify that the foregoing order is truly copied from the records in my office.

W. P. NORWOOD, *D. C.*
For EDWD. P. THOMAS, *C. H. C. C.*

Division between Lynch & Blanton and George Clymer, marked (Z) in bill of exceptions.

[FOR PLAT SEE ORIGINAL.]

Henry County, the first day of January, eighteen hundred and two.

We, William Neall and Isaac Forbes, having been appointed commissioners by the county court of the said county of Henry, in conformity to an act of the General Assembly of the State of Kentucky, for the purpose of making division of lands between residents and non-residents in the said county of Henry, having been called on to divide a tract of eleven thousand acres on the waters of Harrod's creek, in the name of George Clymer for the one-third, and Charles Lynch and John Blanton two-thirds, agreeably to a patent bearing date the 24th day of December, in the year of our Lord one thousand eight hundred and six, and of the Commonwealth of Kentucky the fifteenth, and signed by Christopher Greenup, the then Governor of Kentucky. It being stated to us that the said George Clymer is a non-resident, we have gone on the ground, and made the following division, to wit: Charles Lynch and John Blanton's portion is lot No. 1, containing seven thousand three hundred and thirty-three and one-third acres, agreeably to the plat hereby laid down, which is bounded as followeth, to wit: Beginning at A, in the plat, the northeast corner of John May and John Curd's three thousand five hundred acre survey, three sugar trees; thence S. 78 degrees east, crossing several branches, eleven hundred poles, to an elm, beech, and ash, near a drain, west side thereof; thence north twelve east, crossing several branches, eight hundred and twenty poles, to George Clymer's corner in said line; thence with the division line of Lynch, Blanton & Clymer, north seventy-eight west, seven hundred and twenty-six and one-third poles, to two beech and sugar trees, and a beech sapling, marked C. C. & W. N., and on one marked C. L., near the corner trees; thence south twelve degrees west, two hundred and fifty-three poles, to a corner of a 5,000, formerly in the name of John May, now claimed by the heirs of George Nicholas; and with a line of the same, north seventy-eight west, one thousand and thirty-three and one-third poles, to a beech in a line of Samuel Beall's 1,000 acre survey; thence S. twelve west, crossing Harrod's creek, five hundred and sixty-two poles, to two ash trees and a buckeye, corner to John May and John Curd's 3,500 acre survey; and with their line South 78 east, 660 poles, to the beginning. The angled dotted line on the plat in No. 1, is the line that divides Henry county from Jefferson county.

No. 2, on the plat allotted to George Clymer on the division, is bounded as follows, to wit, containing three thousand six hundred and sixty-six and two-third acres: Beginning at two beech and

sugar trees at G, C, on the plat, corner to the division line between said Clymer and Lynch and Blanton; thence with the said division line, south seventy-eight east, 726⅓ poles, to the corner of said division in the original boundary line, and with old line N. 2 E., 808⅔ poles, to a beech; N. 78 west, 726⅓ poles, to a beech tree: thence south 12 W., 808⅔ poles, to the beginning; hereby conveying and affirming the foregoing division, agreeable to the said allotment, to the said Charles Lynch and John Blanton, for the two-thirds of said 11,000 acres, and the one-third to the said George Clymer, agreeably to the metes and bounds before described.

Given under our hands and seals as commissioners aforesaid, the day and date first above written.

WILL. NEALE, [L. S.] *Com'r.*
ISAAC FORBES. [L. S.] *Com'r.*

Signed, sealed, and delivered in presence of

HENRY COUNTY COURT,
Clerk's Office, 1*st Jan'y*, 1810.

The within division of land was filed in my office, acknowledged by William Neale and Isaac Forbes, commissioners in said county for the division and conveyance of lands, parties thereto, as their act and deed, and admitted to record.

Att: ROW. THOMAS, *C. C.*

HENRY COUNTY, *October Court*, 1827.

An instrument of writing purporting to be a division of 11,000 acres of land, in the county of Henry, between Charles Lynch, John Blanton, and George Clymer, the same being made by William Neale and Isaac Forbes, commissioners appointed for that purpose, was this day produced into court, (the commissioners being absent,) together with the certificate of acknowledgment, entered and attested by Rowland Thomas, clerk. Whereupon, on motion of Charles H. Allen, atto. for the parties, it is ordered that the same be now received and recorded accordingly, which was heretofore done.

Att: EDMD. P. THOMAS, *C.*
By WILL. SHARP, *D. C.*

HENRY COUNTY COURT,
Clerk's Office, *Aug. 8th*, 1828.

I, Edmund P. Thomas, clerk of the county court for the county aforesaid, do certify, that on the day of the date hereof, the foregoing commissioners' report of lands, together with the certificates thereon endorsed, were filed in my office and recorded.

Att: EDMD. P. THOMAS, *C.*

I, Edmund P. Thomas, clerk of the court aforesaid, do certify that the foregoing is truly copied from the records in my office.

EDMD. P. THOMAS, *C.*
By W. P. NORWOOD, *D. C.*

UNITED STATES OF AMERICA,
Eighth circuit, District of Kentucky:

I, John H. Hanna, clerk of the circuit court of the United States of America in and for the district aforesaid, do hereby certify, that the preceding thirty-nine pages contain a true, perfect, and complete transcript of the record and proceedings had in the suit between the parties mentioned in the caption thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said circuit court, this thirty-first day of [SEAL.] December, A. D. eighteen hundred and forty-two, and in the sixty-seventh year of our independence.

JNO. H. HANNA.

THE UNITED STATES OF AMERICA.

The president of the United States of America to the judges [SEAL.] of the eighth circuit court of the United States of America in and for the Kentucky district, greeting:

Allowed by Thos. B. Monroe, J. U. S. Dt. Ky.

That, because in the record and proceedings, and also in the rendering a judgment in a suit before them, between John Doe, on Att. Jno. H. Hanna, C. C. C., K. D. the demise, George Clymer, plaintiff, and George Dawkins, Patrick Blankenship, Rufus Taylor, Elisha Finley, James Nay, William Dawkins, Joseph Whitesides, Lewis Willis, William Whitesides, Mary Castarphan, and George Armstrong, defendants in an action of ejectment, manifest error hath intervened, to the great damage of the said John Doe, on the demise of George Clymer, as in his complaint hath been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice be done to the party aforesaid in this behalf, you are hereby commanded, that if a judgment be given, then under your seal you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, *that* they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, at Washington aforesaid, this 20th day of December, 1842, and in the 67th year of the independence of the United States.

Att: JNO. H. HANNA, *C. C. C. K. D.*

To George Dawkins, Patrick Blankenship, Rufus Taylor, Elisha Finley, James Nay, William Dawkins, Joseph Whitesides, Lewis Willis, William Whitesides, Mary Castarphan, and George Armstrong, greeting:

Whereas a writ of error hath been issued by the clerk of the eighth circuit court of the United States of America in and for the district of Kentucky, *by* on behalf of John Doe, on the demise of George Clymer, returnable to the Supreme Court of the United States, at the city of Washington, the present seat of the National Government, on the second Monday in January next, to reverse a judgment entered up by the said circuit court in an action of ejectment in favor of the said George Dawkins, and ads. of the said John Doe, on the demise of George Clymer.

Therefore, *to* cite and command you that you be and appear in the said Supreme Court at the city of Washington, on the day aforesaid, then and there to hear the errors assigned for the reversal of said judgment, and to be heard, if any thing you have to say, upon the said writ of error.

Witness my hand as judge of the United States of America for the district of Kentucky, this 20th day of December, 1842, and in the 67th year of the independence of the United States.

THOS. B. MONROE, *Ju. Dt. Ky.*

(*Endorsed as follows:*)

Executed on George Dawkins, William Dawkins, Joseph Whitesides, William Whitesides, Mary Castarphan, on the 28th Decr., 1842; and on Elisha Findley, James Nay, Lewis Willis, George Armstrong, on the 29th Dec., 1842, by delivering to them a true copy of the within, and reading and explaining the same to them; and on Patrick Blankenship and Rufus Taylor, by leaving a copy of the within at their residence on the 29th Dec., 1842.

A. G. WATTS, *D. M.*,
For W. B. BLACKBURN, Jr., *M. K. D.*

Filed 30th January, 1843.

1047.

SUPREME COURT OF THE UNITED STATES.

No. 111.

THE UNITED STATES, PLAINTIFFS,

vs.

WILLIAM H. FREEMAN.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MASSACHUSETTS.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At the circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Saturday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-two, before the honorable Joseph Story, associate justice; Peleg Sprague, district judge.

THE UNITED STATES OF AMERICA, plaintiffs,
versus
WILLIAM H. FREEMAN, of Charlestown, lieutenant colonel in the United States marine corps, defendant.

In a plea of the case, for that said defendant, on the day of the purchase of this writ, being indebted to the plaintiff in five hundred dollars for goods sold and delivered by the plaintiff to the defendant; and in five hundred dollars for work done and materials for the same, provided by the plaintiff for the defendant at his request; and in five hundred dollars for money lent by the plaintiff to the defendant; and in five hundred dollars for money received by the defendant, to the use of the plaintiff; and in five hundred dollars for money due from the defendant to the plaintiff, for interest of money before then due and owing from the defendant to the plaintiff, and by the plaintiff forborne to the defendant at the defendant's request, for a long time before then elapsed. In consideration thereof, [defendant] promised to pay the said several sums of money to the plaintiff on demand, yet he has never paid the same, nor any part thereof, to the damage of the said United States of America, as they say, the sum of five hundred dollars.

On which the marshal made return as follows, viz:

J. & G. S. GIDEON, Printers.

UNITED STATES OF AMERICA,
Massachusetts district:

BOSTON, *August* 30, 1842.

Pursuant hereunto, I attached a chip, the property of the within named Freeman; also left a summons at his place of residence, to appear as herein directed.

HENRY HARRIS, *U. S. Dep. Marshal.*

This action was entered at the present term of this court; when and where the parties appeared, by their attorneys, and the cause came on to be heard upon a statement of facts agreed by the parties.

At the hearing, the following questions occurred, upon which the opinions of the judges were opposed; and thereupon, it was ordered by the court, upon motion of Franklin Dexter, esquire, attorney for the United States, that the points on which the disagreement happened should be certified to the Supreme Court of the United States for their decision, viz:

1st. Whether a brevet field officer of the marine corps is by law entitled to receive the pay and rations of his brevet rank, by reason of his commanding a separate post or station, although the force under his command should not be such as would by law, or by such regulations as have in this respect, and for the time, the force of law, entitle a brevet field officer of infantry of a similar grade to brevet pay and rations.

2d. Whether the provision respecting brevet pay and rations, in the 3d section of the act of 1818, ch. 117, is repealed by the act of 1834, ch. 132.

3d. Whether, by force of the act of 1834, ch. 132, the joint resolution of the two Houses of Congress, of the 25th of May, 1832, respecting the pay and emoluments of the marine corps, is repealed.

4th. Whether by force of the army regulation, numbered 1,125, authorizing the issues of double rations to officers commanding departments, posts, and arsenals, a brevet field officer of marines, commanding a separate post or station, is entitled to double rations.

5th. Whether the additional fact of appropriations having been made by Congress for such double rations, entitles such marine officer to receive the same for the years for which such appropriations are made.

6th. Whether a brevet field officer of the marine corps, commanding a separate post, and receiving his brevet pay and emoluments, but being a captain in the line, is entitled to the ten dollars a month additional compensation for responsibility of clothing, &c., under the act of 1834, ch. , applying to the marine corps the act of 1827, ch. 199.

I hereby certify, that the foregoing is a true transcript of the record in the said cause.

In testimony whereof, I have hereto set my hand, and [L. S.] affixed the seal of the said court, this twenty-eighth day of January, A. D. 1843, and in the sixty-seventh of the independence of the United States.

FRANCIS BASSETT, *Clerk.*

Filed 31st January, 1843.